IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE NINTH DAY OF AUGUST
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE Mr. JUSTICE C.V.RAMULU

WRIT PETITION No.22940 of 1994

Between:

M/s. Kakatiya 35 MM (Delux Theatre),

Rep. by its Partner T.Ram Prasad

..... PETITIONER

AND

The Chairman, Industrial Tribunal-cum-

Labour Court, Warangal & another

....RESPONDENTS

ORAL ORDER:

This Writ Petition is filed by the Management being aggrieved by the Award dated 16-6-1994 in I.D.No.61 of 1992 on the file of the Industrial Tribunal-cum-Labour Court, Warangal.

It is the case of the petitioner that the 2nd respondent-workman was appointed as Assistant Operator in its Cinema Theatre with effect from 1-6-1986. Since the date of birth of the workman was 3-7-1931, a notice dated 11-1-1992 was issued to him informing that he was attaining the age of superannuation on 15-2-1992/28-2-1992. At that stage, the workman filed a representation on 17-1-1992 stating that his date of birth is not 3-7-1931, but it was 1-4-1941. However, the same was not considered and after attaining the age of superannuation, the workman was allowed to retire. Therefore, the respondent-workman raised a dispute under Section 2-A(2) of the Industrial Disputes Act,1947 stating that he was prematurely retired and the same amounted to termination of service. He also complained before the Labour Court that in spite of there being lot of evidence in his favour, the management failed to consider the same. The Labour Court, however, after considering the evidence on record, came to the conclusion that the date of birth of the petitioner was 1-7-1937 and he is entitled to be continued in service upto 1-7-1997. Therefore, directed the petitioner herein to pay the emoluments for the period from 1992 to 1997. According to the petitioner, the Award passed by the Labour Court is arbitrary and illegal. The Labour Court cannot decide the date of birth of a workman and absolutely there was no acceptable evidence to show that the date of birth of the workman was 3-7-1937. Hence, this Writ Petition.

The learned counsel for the petitioner submitted that whole case of the respondent-workman is rested on the identity card issued by the Employees State Insurance Corporation and the Election Card issued by the Warangal Municipality, which were marked as Exs.W2 and W11 and which are not acceptable in evidence.

The learned counsel for the 2nd respondent-workman strenuously contended that the workman is an illiterate person and the workman came to know that his date of birth was wrongly recorded as 3-7-1931 only through the notice dated 11-1-1992 issued by the management. The workman's date of birth was 3-7-1937 and to that effect he produced Ex.W3-certificate issued by Sharada Private School. The Labour Court has looked into each and every aspect of the evidence and came to right conclusion on the basis of acceptable evidence. The Award passed by the Labour Court is just, proper and does not call for interference of this Court under Article 226 of the Constitution of India.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the entire material made available on record including the impugned Award.

At the outset, I am of the opinion that the Labour Court has grossly erred in deciding the date of birth of the respondent-workman as 3-7-1937 instead of 1-7-1931 as recorded in the very appointment Order dated 1-6-1986 itself. Admittedly, the respondent-workman raked up the issue only when a notice was received by him stating that he would be attaining the age of superannuation in the month of February,1992. In fact, the date of birth of the workman was mentioned in the very appointment order itself as 3-7-1931 and the same was within the knowledge of the workman from the day one he was appointed into the service of the petitioner-cinema theatre. He did not raise his little finger till the management issued the notice on 11-1-1992. The identity card issued by the ESI Corporation and Election Card cannot be said to be an evidence to prove that the workman's date of birth is 3-7-1997. In fact, the study certificate-Ex.W3 alleged to have been issued by Sharada Private School, Warangal is not in the proforma as required. It does not bear the emblem of the School on the top of the Certificate. Except mentioning 'Class Teacher/Head Master' underneath the certificate, there was no stamp of the School. Ex.W3 is only a study certificate, but strangely, date of birth was mentioned. This certificate was taken to be a gospel truth to decide the date of birth of the workman, which is most unfortunate. The person, who said to have issued Ex.W3, was also not examined before the Labour Court. A bare look at Ex.B1 does not inspire the confidence of the Court to accept the same as evidence. In fact, the workman gave three dates of birth. Of course, the Labour Court has taken one into consideration

and declared that the date of birth of the workman is 3-7-1937. I have looked into the documentary evidence adduced by the workman. I am afraid, such an evidence cannot be relied upon for the purpose of deciding the date of birth of a workman. In fact, in Ex.W1 - letter of appointment – the date of birth of the workman was mentioned as 3-7-1931. In fact, Ex.W10 filed by the workman himself would show that he was aged 42 years as on 14-5-1972, which means, his date of birth was roughly 14-5-1930. From all these things, the irresistible conclusion that can be drawn is that the date of birth of the workman recorded in Ex.B1 as 3-7-1931 is correct. As stated above, the Labour Court has grossly erred in believing the unacceptable evidence and coming to the conclusion that the date of birth of the workman is 3-7-1937 instead of 3-7-1931. The impugned Award of the Labour Court suffers from legal infirmity and is liable to be set aside and accordingly, set aside.

The Writ Petition is allowed. No order as to costs.

09-8-2005

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